

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

The Court, having reviewed the renewed cross-motions for summary judgment, the Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida, the governing law, and the balance of the record, does hereby find and **ORDER**:

- (1) The Report and Recommendation is **ADOPTED IN PART** as set forth below;
- (2) Department of Corrections (“DOC”) Secretary **Bernard Warner** (in his official capacity) is substituted as defendant for former DOC Secretary Eldon Vail (in his official capacity);
- (3) Summary judgment is **GRANTED** on the procedural due process claim in favor of plaintiff and against defendants with respect to (a) **Sergeant Lopez** (in his individual and official capacity), and (b) **DOC Secretary Warner** (in his official capacity);

ORDER -1

(4) Summary judgment is **GRANTED** on the procedural due process claim in favor of defendants and against plaintiff with respect to (a) **former DOC Secretary Vail** (in his individual capacity, (b) **Sergeant Lopez** (in his official capacity) **for damages**, and (c) **DOC Secretary Warner** (in his official capacity) **for damages**;

(5) The Court **DECLINES TO ADOPT** the prospective declaratory and injunctive relief recommended by Magistrate Judge Tsuchida in favor of plaintiff and against Sergeant Lopez (in his official capacity) and DOC Secretary Warner (in his official capacity). DOC has determined that it will amend the definition of nuisance contraband and DOC policy 420.375 to address the concerns expressed in the Magistrate Judge's Report and Recommendation. *See* Dkt. #65. The parties have not fully briefed the adequacy of the proposed changes to DOC policy. Therefore, the Court declines to decide as a matter of law at this time whether Plaintiff is entitled to additional declaratory and/or injunctive relief.

(6) Supplemental jurisdiction is **EXERCISED** over plaintiff's state-law claims;

(7) Summary judgment is **GRANTED** in favor of defendants on plaintiff's other federal claims regarding (a) the First Amendment, (b) the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), (c) takings, (d) facial vagueness/overbreadth under the First Amendment, and (e) void for vagueness as applied under the Due Process Clause;

(8) Plaintiff is **INVITED** to file a motion for appointment of *pro bono* counsel within **thirty (30) days** of the date of this Order to assist with all further proceedings, including submission of a joint status report regarding a schedule for mediation, settlement, supplemental dispositive motions, and trial with respect to (a) **damages** and (b) **state-law claims**; and

1 (9) The Clerk of Court is directed to send copies of this Order to plaintiff and to
2 Magistrate Judge Brian A. Tsuchida.
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4 DATED this 4 day of September 2012.
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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE
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